

Before the  
Federal Communications Commission  
Washington, DC 20554

FCC 14M-31  
10139

In the Matter of	)	EB Docket No. 11-71
	)	
<b>MARITIME COMMUNICATIONS/LAND</b>	)	File No. EB-09-IH-1751
<b>MOBILE, LLC</b>	)	FRN: 0013587779
	)	
Participant in Auction No. 61 and Licensee of	)	
Various Authorizations in the Wireless Radio	)	
Services	)	
	)	Application File Nos.
Applicant for Modification of Various	)	0004030479, 0004144435,
Authorizations in the Wireless Radio Services	)	0004193028, 0004193328,
	)	0004354053, 0004309872,
Applicant with <b>ENCANA OIL AND GAS (USA),</b>	)	0004310060, 0004314903,
<b>INC.; DUQUESNE LIGHT COMPANY, DCP</b>	)	0004315013, 0004430505,
<b>MIDSTREAM, LP; JACKSON COUNTY</b>	)	0004417199, 0004419431,
<b>RURAL MEMBERSHIP ELECTRIC</b>	)	0004422320, 0004422329,
<b>COOPERATIVE; PUGET SOUND ENERGY,</b>	)	0004507921, 0004153701,
<b>INC.; ENBRIDGE ENERGY COMPANY,</b>	)	0004526264, and 0004604962
<b>INC.; INTERSTATE POWER AND LIGHT</b>	)	
<b>COMPANY; WISCONSIN POWER AND</b>	)	
<b>LIGHT COMPANY; DIXIE ELECTRIC</b>	)	
<b>MEMBERSHIP CORPORATION, INC.;</b>	)	
<b>ATLAS PIPELINE-MID CONTINENT, LLC;</b>	)	
<b>AND SOUTHERN CALIFORNIA REGIONAL</b>	)	
<b>RAIL AUTHORITY</b>	)	
	)	
For Commission Consent to the Assignment of	)	
Various Authorizations in the Wireless Radio	)	
Service	)	

**ORDER**

Issued: October 8, 2014

Released: October 9, 2014

*Background*

On September 10, 2014, Environmental LLC and Verde Systems LLC (collectively "ENL-VSL"), joined by Warren Havens, submitted a Motion Regarding the Active Parties' Stipulation of Automatic Termination Under § 1.955(a) of all but 16 Stations ("Motion"). ENL-

VSL, Maritime Communications/Land Mobile, LLC (“Maritime”) and the Enforcement Bureau (“Bureau”) were collaborating on a joint stipulation as to all but 16 site-based facilities licensed to Maritime. ENL-VSL added language stating that the sole aspect of the stipulation that ENL-VSL and Havens joined was the legal conclusion that all of the listed facilities had terminated under Section 1.955 (a) of the Commission’s Rules.<sup>1</sup> In response to ENL-VSL’s revisions, the Bureau stated that it had included and accommodated ENL-VSL and Mr. Havens in the drafting process, including the incorporation of additional facts at ENL-VSL’s requests.<sup>2</sup> But because ENL-VSL and Mr. Havens were not prepared to agree on any of the facts set forth in the stipulation, the Bureau decided to file the stipulation without their support.<sup>3</sup>

ENL-VSL argues that the Bureau has incorrectly asserted that the parties were not in agreement as to the termination of the listed site-based facilities. ENL-VSL requests (1) the Presiding Judge find that ENL-VSL, Mr. Havens, Maritime, and the Bureau have all stipulated to the termination of all but 16 of Maritime’s site-based facilities under Section 1.955(a) of the Commission’s Rules; (2) the Presiding Judge accept the unsigned draft stipulation of those parties; and (3) that the Presiding Judge rule that the stations terminated pursuant to the stipulation are no longer at issue for purposes of Issue G.<sup>4</sup>

On September 11, 2014, the Bureau submitted a Response to Motion Regarding Proposed Stipulation (“Response”). The Bureau asserts that it incorporated additional facts and made changes to the stipulation where necessary to respond to concerns of ENL-VSL and Mr. Havens.<sup>5</sup> The Bureau notes that it was hesitant to stipulate as to legal conclusions, because it would be up to the Judge to decide whether the facts supported such conclusions. Even so, they included those conclusions to accommodate ENL-VSL and Mr. Havens.<sup>6</sup> Despite these efforts, ENL-VSL and Mr. Havens still refused to agree to any of the stipulated facts. Thus, the Bureau could not agree to the language ENL-VSL sought to add to the stipulation.

Nonetheless, the Bureau agrees with ENL-VSL that the factual matters regarding the status of the stipulated facilities need not be litigated at hearing. A Joint Stipulation Between the Enforcement Bureau and Maritime on Discontinuance of Operations of Previously Stipulated Site-Based Facilities (“Joint Stipulation”) was submitted with the Bureau’s Response.

In the afternoon of September 11, 2014, Mr. Havens replied to the Bureau’s Response via an e-mail, which he later submitted for the record. Mr. Havens asserts that he and ENL-VSL did not agree as to the factual assertions presented in the Joint Stipulation because Bureau and Maritime failed to provide evidence sufficient to support those assertions. Further, Mr. Havens suggests that the Joint Stipulation does not “admit to facts and evidence of permanent discontinuance and auto termination, for reasons other than proper participation in and decision on this issue (g) proceeding.”<sup>7</sup>

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<sup>1</sup> Motion at 1.

<sup>2</sup> Motion, Exhibit 2.

<sup>3</sup> *Id.*

<sup>4</sup> Motion at 2.

<sup>5</sup> Response at 2-3 ¶ 3.

<sup>6</sup> Response at 3 ¶ 3.

<sup>7</sup> Havens e-mail to Pamela Kane at 1 (Sep. 11, 2014) (underlining in original).

### *The Joint Stipulation*

The September 11, 2014, Joint Stipulation recites that licenses KA98265, KCE278, KPB531, KUF732, WFN, WHW848, WHX877, and WRD580 have already been canceled.<sup>8</sup>

The Joint Stipulation further states that Block A and Block B of call signs WHG693, WHG701-703, WHG705-749, and WHG751-WHG754; Block A of call sign WHG750; site-based facilities KAE889 – Locations 6, 8, 12, 14, 22, 26-28, 33, 37, 39, 40, 44, and 46; site-based facilities WRV374 – Locations 2, 3, 8, 12, 17, 19, 20, 22-24, 26-29, 31, 34, 36, and 39; site-based facilities WHV773 – Locations 1, 2, and 3; site-based facility WHV740 - Location 2; and site-based facilities WHV843 – Locations 1, 5, and 6 are not currently being used to provide maritime and/or land mobile communications services to subscribers.<sup>9</sup> Maritime has made no efforts to maintain these frequencies in operational status.<sup>10</sup> Choctaw Communications, LLC, Choctaw Holdings, LLC, and Maritime do not have plans to resume operations of these frequencies.<sup>11</sup> Maritime thus concedes that operations of these authorizations have permanently discontinued and have automatically terminated.<sup>12</sup>

### *Discussion*

The litigating parties unanimously request that the Presiding Judge approve a stipulation so that numerous licenses need not be litigated under Issue G. However, the Presiding Judge cannot accept legal conclusions that are not sufficiently supported by facts. The Presiding Judge may reject the stipulations of fact submitted by the Bureau and Maritime until such time that all litigating parties agree to them. But that would cause significant delay and greatly burden the case with uncertainty as to the scope of the upcoming hearing on Issue G. Or he may accept the Joint Stipulation in full although litigating parties ENL-VSL and Mr. Havens will not agree to the underlying facts.<sup>13</sup>

For the following reasons, the Presiding Judge will opt for the second option by a narrowed ruling that will ensure fair treatment of ENL-VSL and Mr. Havens.

ENL-VSL and Mr. Havens do not agree to any of the facts underlying the Joint Stipulation. Mr. Havens suggests that they cannot agree because the Bureau and Maritime failed to provide evidence that supports their assertions of fact. This representation is belied by the failure of ENL-VSL and Mr. Havens to identify any specific concern about accuracy of any stipulated fact. Instead, they categorically refuse to agree to any facts, including facts that unambiguously support their previously expressed positions on Issue G. For example, they

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<sup>8</sup> Joint Stipulation at 3 ¶¶ 5-6; 4 ¶¶ 9-10; 4 ¶¶ 13-14; 5 ¶¶ 17-18; 5 ¶¶ 21-22; 5 ¶¶ 25-26; 6 ¶¶ 29-30; 6 ¶¶ 33-34.

<sup>9</sup> *Id.* at 6 ¶ 35; 6 ¶ 36; 10 ¶ 55; 12 ¶ 69; 13 ¶ 81; 15 ¶ 91; 16 ¶ 101.

<sup>10</sup> *Id.* at 7 ¶¶ 40-41; 10-11 ¶¶ 58-59; 12 ¶¶ 71 -72; 14 ¶ 83; 15 ¶ 93; 16 ¶ 103.

<sup>11</sup> *Id.* at 7-8 ¶¶ 42-45; 11 ¶¶ 60-61; 12 ¶¶ 73-74; 14 ¶¶ 84-85; 15 ¶¶ 94-95; 16 ¶¶ 104-05.

<sup>12</sup> *Id.* at 8 ¶¶ 46-51; 11 ¶¶ 62-65; 13 ¶¶ 75-78; 14 ¶¶ 86-88; 15 ¶¶ 96-98; 16 ¶¶ 106-08.

<sup>13</sup> The Presiding Judge will not receive the stipulation submitted by ENL-VSL as an exhibit to its Motion because it is incomplete as an unsigned draft. Should ENL-VSL and Mr. Havens wish to submit their own “stipulation” to memorialize its position that it does not join the Joint Stipulation’s presentation of the underlying facts, it is welcome to do so. However, the Presiding Judge believes this is unnecessary, as the ENL-VSL Motion is clear as to those parties’ position on the matter.

refuse to accept that facilities are not operational and that there are no plans to resume any operations. If ENL-VSL and Mr. Havens will not even accept self-evident factual concessions by Maritime, the Presiding Judge believes that requiring any further negotiating of the facts would be fruitless.

In order to satisfy the reasonable requests of the litigating parties, and to avoid any further delay and uncertainty, the Presiding Judge will accept the facts presented in the Joint Stipulation. To ensure that ENL-VSL and Mr. Havens are not disadvantaged by reliance on facts to which there is not total agreement, the Presiding Judge will accept the stipulated facts solely for the narrow purpose of resolving Issue G for the site-based facilities that are identified by the Joint Stipulation. If any party wishes to use any stipulated fact for any purpose beyond the resolution of Issue G, such fact must be established anew.

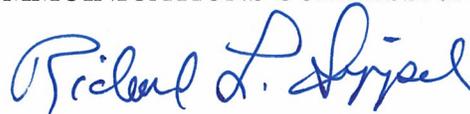
### *Conclusion*

Accordingly, the Joint Stipulation is accepted.<sup>14</sup> Maritime candidly admits that the cited facilities are not currently operating and that there are no efforts to resume their operations in the future. The Presiding Judge agrees with the determination of the Bureau and Maritime in the Joint Stipulation, and the assertion of ENL-VSL in its Motion, that operations have permanently discontinued and that the authorizations have automatically terminated per Section 1.955(a) of the Commission's Rules.<sup>15</sup> In such a case, the Presiding Judge need not take any action revoking, deleting, or otherwise terminating such licenses.<sup>16</sup>

Therefore, Issue G is declared moot as to the stipulated authorizations, as well as to licenses that the Commission has already canceled.

**SO ORDERED.**

FEDERAL COMMUNICATIONS COMMISSION<sup>17</sup>



Richard L. Sippel  
Chief Administrative Law Judge

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<sup>14</sup> In *Memorandum Opinion and Order*, FCC 14M-18, the Presiding Judge considered a joint stipulation submitted by Maritime and the Bureau proposing the cancelation of the same authorizations that are the subject of the current Joint Stipulation solely as a means to expedite litigation. *Memorandum Opinion and Order*, FCC 14M-18 at 23 ¶ 67 (ALJ 2014). The Presiding Judge used his discretion to reject that stipulation, being concerned that canceling those licenses for the benefit of Maritime in expediting the resolution of this proceeding would run afoul of Maritime's existing bankruptcy plan. *Id.* at 24-26 ¶¶ 69-72. However, in submitting the Joint Stipulation to the Presiding Judge, Maritime no longer seeks cancelation solely to save on litigation costs, but concedes the merits of Issue G via an admission against its interests. It is now appropriate to rule on those licenses. If any party to this proceeding wishes to argue that the automatic termination of Maritime's site-based authorizations undermines Maritime's bankruptcy plan, those arguments should be directed to the bankruptcy court and not the Presiding Judge.

<sup>15</sup> 47 C.F.R. § 1.955(a).

<sup>16</sup> *Maritime Communication/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, 26 FCC Rcd 6520, 6546 n.164 (2011) ("HDO").

<sup>17</sup> Courtesy copies of this *Order* sent by e-mail on issuance to each counsel and to Mr. Havens.